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THE LANGUAGES ACTS IN THE REPUBLIC OF IRELAND AND CANADA: LESSONS TO BE LEARNT BY NORTHERN IRELAND

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Linguistic and socio-linguistic texts consistently reiterate the importance of language as a vital aspect of self-identity and ethnicity.¹ It is for this reason that languages, and specifically minority languages, need to be protected. In Northern Ireland, the Irish language has a complicated socio-cultural heritage. It is not a “state language,” nor indeed is it one that is respected by many state politicians. The language enjoys little state protection, legal or otherwise. Education programmes and language maintenance programmes provide insufficient incentives to speak and enjoy the language. As a result, Irish has been eroded almost entirely from the communal value system of a whole community of speakers. This erosion has itself been accelerated by the overt politicisation of language in Northern Ireland, resulting in relatively minimal use outside the education arena and a social marginalisation of the language within Northern communities.

Officially, the position of the Irish language has significantly improved since the 1970s, with little overt hostility from official sources. This is due, particularly, to its protection under the Belfast Agreement 1998 and under the European Charter for Regional or Minority Languages 1992² Despite this strength in theory, the reality is much less benign and, perhaps, much more invidious. Irish in Northern Ireland has traditionally been perceived as a threat and a political device capable of polarising rather than bringing about positive effects.

Similarly, the English language is itself, a political tool. One need only look at the tribal “branding” in use in Northern Ireland, such as the

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¹ Hranush Tovmasyan, “Literary Translation and Preservation of Presuppositional Idiom Content” in Peter J Wells & Stephen Zolyan eds., *Higher Linguistic Education from the Perspective of Reforms: New Approaches, Prospects, and Challenges* (European Centre for Higher Education, 2011).

² Hereinafter “The Charter”.

naming of Derry/Londonderry and terms such as the “British Isles” or “mainland”. The naming of the state itself brings with it bands of tribal affiliation, as Northern Ireland is a valid term for many, yet others call it the “North of Ireland,” “Ulster,” or “The Six Counties,” or even “The Occupied Area.”

If the use of specific terms in English signifies particular political viewpoints, how much more revealing is the use or non-use of Irish? Irish signage is predominant in certain areas of Belfast. Reverend Dr Norman Hamilton, in a speech about the politicisation of language to the Gaelic Athletic Association³ spoke about how imposed dual-language signage can further ghettoise the Irish language and invoke unease in the Unionist community.⁴ The GAA responded by indicating their awareness of the politicisation of language in the province.⁵ There is, in Northern Ireland, a close connection between politics and language and there is a growing realisation that the Irish language must be de-politicised if it is to prosper. Language is a social semiotic,⁶ and it has more than a communicative function, importing with it the cultural underpinning of a race.

The Irish language thus occupies a contested space within a jurisdiction in which languages are highly politicised. Political issues should not be the primary consideration in attempting to protect and strengthen language rights. Attempting to align Irish with Ulster-Scots is unhelpful. Equally trying to rigidly implement policies for Irish that are in parallel with Canada, whose languages occupy a much more powerful linguistic arena, is also impractical. The answer is to find some kind of realistic space in which all languages can be afforded respect.

The legal framework in which the Irish language in Northern Ireland operates involves protection and recognition at a European level. The Irish language in this context is protected under the European Charter for Regional or Minority Languages, but as noted earlier, this protection is inadequate. The implementation of a Languages Act would give greater legal power to preserve the Irish language. The United Kingdom [hereinafter, the UK] now needs to fulfil the obligations to implement a Languages Act as set out under the St Andrews Agreement and the

³ Hereinafter GAA.

⁴ Author unknown, *Hamilton Tells GAA to Help De-Politicise Irish*, <http://www.newsletter.co.uk/news/local/hamilton_tells_gaa_to_help_de_politicise_irish_1_3199920> (Visited 6 May 2012).

⁵ *Ibid.*

⁶ Gordon C Wells & John Nicholls eds., *Language & Learning: An Interactional Perspective* (The Falmer Press, 1985).

subsequent Act.⁷ This article sets out the background to and the constitutional context of Irish, as well as the experience of Irish in the courts leading to the Official Languages Act 2003 in Ireland. It also examines the Act and the main challenges facing it. In addition, this article also considers the Canadian Official Languages Act, and shows how elements of this Act could provide some admittedly imperfect inspiration for a Northern Ireland equivalent.

The road to legislative protection for Irish has not been easy. Realistically, a Languages Act will not, in itself, revitalise a language or prevent its demise though it may delay its decline. However, if implemented, this protection could raise the public profile of the language, give it political capital and international legitimacy and even give voice to forgotten lexicons of the past. Devising, implementing and monitoring a Languages Act that embraces the complex political, linguistic situation in Northern Ireland will not be easy. POBAL, an intermediary that works on behalf of Government to support communities and local agencies, put forward a rationale for a Languages Act as the next “logical step” for the government:

It is an enabling action that will clarify the rights of Irish speakers and the responsibilities of public and government bodies. It will make it easier for individuals to understand and protect their rights and it will enable those working in the government and public sectors to fulfil their duties. It will assist in harmonising indigenous language protections throughout these islands and will help unify equality and rights legislation in the north.⁸

According to Williams,⁹ “indigenous language rights might be considered both in terms of freedom to promote a particular language within specific domains and in terms of freedom from neglect, denial and discrimination.”¹⁰ He argues that giving official legislative status to the Irish language would subsequently inspire increased use of the language. Irish must be acknowledged within its own individual space. The language is part of the “Equality Agenda” and thus, there is a need for Irish

⁷ Northern Ireland (St Andrews Agreement Act) 2006, s. 28(D).

⁸ Janet Muller, *The Irish Language Act NI* (POBAL, 2006), at 8.

⁹ Research Unit for Language, Policy and Planning School of Welsh, Cardiff University.

¹⁰ Professor Colin H Williams, *The Irish Language Act NI* (POBAL, 2006), at 13

<<http://www.pobal.org/uploads/documents/act/Act.pdf>> (visited 23 April 2012).

speakers' rights to be expanded. The developments and inclusion of Languages Acts in Wales, Scotland and Ireland highlight the need to safeguard minority languages in national legislation. Irish is an official working language of the EU and, consequently, if a Languages Act existed in Northern Ireland it would likely increase engagement within the professional context.¹¹ POBAL contend that a Languages Act in Northern Ireland would make it easier for people to exercise their rights and it would make it possible for people working in government and public bodies to complete their duties through the medium of Irish.¹²

I. Irish Language: Cultural and Linguistic Context

The Irish language occupies a strange and unusual sociolinguistic landscape. It is language of a minority,¹³ and also a national language of a sovereign state. It is a language that has an older written orthography than many world languages, dating back to the 6th century. It holds a place in the national consciousness; it is at times loved, at times reviled, at times identified as the cornerstone of Irish identity, and at times cast aside as an anarchic irrelevance.¹⁴ The legal landscape and context is set against this cultural and sociolinguistic landscape. The composition, implementation and review of the Official Languages Act 2003 of Ireland is an important tool for providing legal clarity for the language. The next section of this article will discuss the impetus for and the origin of this Act's evolution.

II. Current Legal Status

The status of the Irish language has transformed in recent years, as it is now an official working language of the European Union (EU).¹⁵

Efforts had been made to give the language a defined status in Europe, such as in 1973 when it was granted unique status as a Treaty language, but not as an official working language of the EU.¹⁶ The effect

¹¹ *Ibid.*, at 14-16.

¹² *Ibid.*, at 16.

¹³ Iarfhlaith Watson, "Irish Language and Identity" in Caoilfhionn Nic Pháidín & Seán Ó Cearnaigh eds., *A New View of the Irish Language* (Cois Life, 2008), at 108.

¹⁴ *Ibid.*

¹⁵ Official EU Languages <http://ec.europa.eu/languages/languages-of-europe/eu-languages_en.htm 2013> (visited 29 Jan 2013).

¹⁶ Sean Ó Riain, *How a Member State can Influence EU Language Policy- The Case of the Irish Language*, at 5

of this is that primary legislation has an Irish version, which, from a legal viewpoint, is as authentic as that of the official working languages. Official working status had not been granted to Irish because of a fear that this would have implications for other languages.¹⁷ The fact that no monoglot speakers of Irish were in existence in Ireland and that English was the predominant language therein meant that there was no imperative to grant this status to the language. Cearbhall Ó Dálaigh's efforts, however, ensured that Irish was granted official working status at the European Court of Justice.¹⁸

Prior to the granting of official status to Irish, there was a perceived reduction of the status of the language in Ireland because it was not seen as having a role in Europe.¹⁹ This diminishing status was contradicted by the increase in the visual and auditory presence of Irish in the media.²⁰ When the EU was enlarged in 2004, a good opportunity arose to review the 1972 decision to deny the Irish language official status. Ireland was able to base its case on Irish's unique status as a national Constitutional language and as an EU treaty language. In 2005, the EU Council of Ministers granted the Irish language full official status as an EU working language.²¹ This gave Irish certain rights in terms of usage. More importantly, these brought with them a perception that the language had a hierarchical importance. In Northern Ireland, the language does not have this protection.

Legal protection of Irish in Ireland is, however, even more firmly entrenched by legislation. It enjoys full constitutional status and protection under the Official Languages Act, 2003. Support for the Act came from three sources: a firm constitutional base, a legislative base arising from decisions of the Superior Courts and efforts of a language-community. This latter action arose from demands from the Irish language community that their language rights be clearly confirmed in law. The following sections of this article will examine these three areas in turn.

<<http://www.seanoriain.net/Media/How%20Irish%20became%20an%20EU%20Language.pdf>> (visited 20 August 2012).

¹⁷ *Ibid.*, at 5-6.

¹⁸ *Ibid.*, at 6.

¹⁹ *Ibid.*

²⁰ *Ibid.*

²¹ *Ibid.*, at 7.

A. Constitutional Base

The Irish Constitution contains a very obvious formal constitutional acknowledgement Irish. Article 8 clearly defines English as the “second official language”²² in contrast to Irish, which is designated as the “national” and “first official language.”²³ Irish language provisions in Article 4 of the former Free State Constitution and Article 8 of *Bunreacht na hÉireann* are, however, expressed as declarations rather than rights. Article 4 of the Free State Constitution states “the national language of the Irish Free State (*Saorstát Éireann*) is the Irish language, but the English language shall be equally recognised as an official language. Nothing in this Article shall prevent such special provisions being made by the parliament.”²⁴

In the Free State Constitution, Irish and English were both declared as official languages with equal status. In the 1937 Constitution, however, the language became the “first” official language of the state. Article 25.4.4^o of the Irish Constitution states that all Acts of the *Oireachtas* must be translated into Irish. Article 8 can also affect education where a primary school can be refused funding if an adequate standard of Irish is not provided.²⁵ Efforts to change the primacy of the status attached to Irish and to revert to the 1922 position occurred in 1996 when a Report of the Constitutional Review Group argued that the status given to the language by Article 8 is “unrealistic, given that English is the language currently spoken as their vernacular by 98% of the population of the State.”²⁶ The report argued that the language must be constitutionally “understood and respected” but that this could be achieved by giving both languages equal status.²⁷ There was little appetite for this proposal at that time and, as it stands, the Irish language enjoys definitive protection as the first language of the state.

²² Article 8.2^o, *Bunreacht na hÉireann*.

²³ Article 8.1^o, *Bunreacht na hÉireann*.

²⁴ Article 4, Free State Constitution 1922.

²⁵ Mercator-Education, *The Irish Language in Education in the Republic of Ireland* (Mercator-Education, 2001).

²⁶ Report of The Constitution Review Group, *The All-Party Oireachtas Committee on the Constitution 1996-1997* <<http://archive.constitution.ie/reports/crg.pdf>> (visited 18 June 2012).

²⁷ *Ibid.*

B. Case Law Base

There has been a significant volume of constitutional litigation challenging the scope of language rights and related duty of the state in respect of the provision of Irish language services.²⁸ Establishing linguistic entitlements was traditionally seen as the role of the courts.²⁹ Many of the judgments of the Courts in these cases have focused on the need to be mindful of the constitutional protection that is given to the Irish language. In Ireland, everyone has the right to use Irish in a court proceeding, an entitlement which was formally recognised by Kennedy CJ in *Ó Foghludha v McClean*³⁰ where he declared that no state organ can derogate from the status of the language.³¹ This position was further supported in *Attorney General v Joyce and Walsh*,³² where Kennedy CJ recognised the right to give evidence in Irish “first on general principles of Natural Justice as their vernacular language and secondly, as a matter of a Constitutional right.”³³

Language rights issues were further explored in the Irish courts in the 1983 case of *The State (Mac Fhearraigh) v Mac Gamhna*,³⁴ where O’Hanlon J permitted cross-examination through the medium of Irish. He gave strong evidence in support of the language in a constitutional sense by stating “it must always be assumed that Irish is the first official language, and that the citizen is entitled to require that it be used when the State has official matters to administer.”³⁵ The *Mac Fhearraigh* case resulted from a hearing of the Employment Appeals Tribunal in which an individual wanted to carry out the hearing through the medium of Irish as far as reasonably possible. He also wanted to cross-examine the witness in Irish even though the witness had given evidence in English.³⁶ When the tribunal refused this he sought an order of *mandamus* from the High Court. O’Hanlon J interpreted Article 8 of the Constitution by regularly referring

²⁸ An Coimisinéir Teanga, *Court Cases on the Irish Language Under the Constitution* <<http://www.coimisineir.ie/downloads/LanguageRights.pdf>> (visited 01 February 2013).

²⁹ Charles Gabau, “Protecting the Rights of Linguistic Minorities: Challenges to Court Interpretation” (1996) 30 *New England Law Review* 227, at 227.

³⁰ [1934] IR 469, at 482.

³¹ [1934] IR 469, at 482.

³² [1929] IR 526.

³³ [1929] IR 526, at 531.

³⁴ *The State (Mac Fhearraigh) v Mac Gamhna* 1 Iúil 1983 (An Ard-Chúirt) [hereinafter *Mac Fhearraigh*].

³⁵ 1 Iúil 1983 (An Ard-Chúirt).

³⁶ Niamh Nic Shuibhne, “State Duty and the Irish Language” (1997) 4 (1) *Dublin University Law Journal* 33.

to the special status of the language under the Constitution.³⁷ O’Hanlon J affirmed that any person has a constitutional right to elect to Irish regardless of their competence. He consequently confirmed that the special status of Irish under the Constitution produces a set of unspecified rights for citizens to use the language for official purposes and in the courts.³⁸

Judicial statements have, for the most part, given clear support to the Irish language. For example, in 1988 O’Hanlon J noted that providing an Irish version of forms is expensive. However, O’Hanlon J found that it was an injustice to those who want to carry out their business in Irish for comparable facilities to not be made available to them.³⁹ Similarly, in 2001, Hardiman J determined that this has now resulted in a situation where only an individual of extraordinary independence would attempt to carry out his/her business in Irish.⁴⁰ The person who desires basic legal materials in Irish would likely be aware that seeking to invoke this provision would cause embarrassment to the relevant officials, and that the business would be dealt with more quickly and efficiently if English were the chosen medium. Hardiman J took the view that this situation is an “offence to the letter and spirit of the Constitution.”⁴¹

Case law has almost consistently resulted in a strengthening of the position of Irish. *Ó Beoláin v Fahy*⁴² is a Supreme Court judicial review case concerning an Irish speaker who had been served with a summons in the Irish language and had carried out all actions with the gardaí through the medium of Irish. The plaintiff told the court that he wanted to carry out his defence in Irish and that he wanted the relevant documents to be served on him in Irish. He wanted to be served an Irish version of the Road Traffic Act, 1994, of the Road Traffic Act, 1995, and of the Rules of the District Court, 1997, but they were not available. It was held that under Article 25.4.4° of the Constitution, the State was obliged to make an official translated Irish version following the signature of the president.⁴³ Hardiman J found that when following Article 8.3° of the Constitution, it

³⁷ 1 Iúil 1983 (An Ard-Chúirt), O’Hanlon J; Nic Shuibhne, note 34.

³⁸ 1 Iúil 1983 (An Ard-Chúirt).

³⁹ *Ó Murchú v. Registrar of Companies and the Minister for Industry and Trade* [1988] IRSR (1980-1998) 42.

⁴⁰ *Ó Beoláin v Fahy* [2001] 2 IR 279.

⁴¹ [2001] 2 IR 279, at 350.

⁴² [2001] 2 IR 279.

⁴³ Dáithí Mac Cárthaigh, “Interpretation and Construction of Bilingual Laws: A Canadian Lamp to Light the Way” (2007) *Judicial Studies Institute Journal* 211.

is impossible to exclude Irish from any aspect of the State's public dialogue.⁴⁴ He noted:

Nor can it be treated less favourably in these contexts than the second official language. Nor can those who are competent and desirous of using it as a means of expression or communication be precluded from or disadvantaged in doing so in any national or official context.⁴⁵

Hardiman J further highlighted that the State imposes many burdensome duties on its citizens in many contexts. These are often expensive and time consuming, but compliance is appropriately required. It follows naturally that the State itself must fulfil its duties, in particular those arising from the Constitution. The State cannot, according to Hardiman J, "be heard to complain that its non-compliance over a period of decades have now rendered present compliance even more difficult."⁴⁶

Nevertheless, some ideologically different judgments have also emerged, such as in 2009 where Charleton J stated:

The State is not required to produce any particular class of documents that concern a criminal process in either Irish or English. The State can choose one language or the other. This is not an abuse of anyone's rights. An illiterate person can get a document read, an English-speaking person can get someone to explain an Irish document to him and so can an Irish-speaking person an English document; ...Those rights are in no way undermined by any particular document coming from the State being in either English or Irish...I can find no possibility that a real risk of an unfair trial has been established by the applicant merely because a machine has produced a statement which he fully understands in a language that he would, on occasion, prefer not to use.⁴⁷

The following year, Macken J in *Murchú v An Taoiseach*⁴⁸ declared that there is no constitutional duty on the appellants to supply translations of

⁴⁴ [2001] 2 IR 279, at 350.

⁴⁵ [2001] 2 IR 279, at 340.

⁴⁶ [2001] 2 IR 279, at 352.

⁴⁷ Per Charleton J in *Ó Griofáin v Éire & chuid eile* [2009] IEHC 188.

⁴⁸ *Murchú v An Taoiseach* [2010] 4 IR 520.

every statutory instrument to the public at large, counting the respondent in the case.⁴⁹ In his judgment he stated that a constitutional duty does exist to provide all Rules of Court through the medium of Irish to the respondent as soon as is practically possible after they are published in English.⁵⁰

The abundance of cases relating to the extent of Irish language rights, and the duties that apply to the state arising from the constitutional status afforded to the language, indicates that Irish language speakers have found themselves in a form of legal limbo; on the one hand their language enjoys full constitutional safeguarding, and on the other hand in the reality of day to day life Irish is seen to have little part, sense, or legitimacy. Almost all of these cases dealt with a lack of Irish in public services. An unsurprising response to this litigation was the journey towards additional legislative provisions that would interpret and support the constitutional status of the Irish language. Case law, in many ways, provided the catalyst for change and for a Languages Act that would perceptibly give added protection to the language.⁵¹

This issue will be examined further to determine if any parallels exist between Irish case law and Northern Irish case law in this regard.

C. *Action of the Irish Language Community*

The pathway toward the Languages Act has been layered with the actions of numerous Irish language organisations. *Conradh na Gaeilge* campaigned for language legislation during the 1970s and 1980s, and in 1977 produced a draft Bill of Rights for the Irish Language.⁵² This was followed by a second version in 1982. Verona Ní Dhrisceoil highlights the fact that this draft bill received little attention.⁵³ In 1993 *Bord na Gaeilge*, the precursor to today's *Foras na Gaeilge*, issued a set of bilingual non-statutory guidelines for appropriate state services for Irish speakers. However, these guidelines did not provide for a monitoring system to ensure implementation.⁵⁴ In 1997, the Minister for Arts, Culture and the Gaeltacht announced an intention to introduce a Languages Act and in July

⁴⁹ [2010] 4 IR 520, at 529.

⁵⁰ [2010] 4 IR 520, at 552.

⁵¹ Verona Ní Dhrisceoil, "Irish language rights in the era of austerity" (2012) 30(5) *Irish Law Times* 72.

⁵² *Ibid.*, at 72.

⁵³ *Ibid.*

⁵⁴ *Ibid.*

1998, *Plé Cháipéis — towards a Language Act* was published, resulting ultimately in the introduction of the Official Languages Act, 2003.⁵⁵

In many ways, the battle to secure this Languages Act is linked to broader European action to protect minority languages and to a broadening of perspectives about how language rights are in some way linked to human rights, as Ní Dhrisceoil explains:

In a more general sense, the introduction of language legislation in Ireland can be seen as part of a shift within international human rights instruments post-1990 recognising minority language rights as positive rights rather than negative rights. Specifically, that states have a duty and an obligation to take affirmative action to protect and promote minority languages.⁵⁶ The introduction of language legislation domestically can be seen as part of this international shift.⁵⁷

Castellino has clarified the link between human rights law and language protection.⁵⁸ He shows how policies of affirmative action, as framed in human rights law, create an overriding obligation on states. Within this framework parties have an obligation to design effective human rights policies including, where appropriate, their linguistic rights. He argues that any affirmative language action should be subject to specific tests.⁵⁹ He has examined the University College Galway Act, 1929, which sought protection for the Irish language. He concluded that, although affirmative action is justified in the promotion of the language, the policy failed to satisfy the effectiveness test and consequently failed to obey international Human Rights legal principles.⁶⁰

There has, therefore, traditionally been a widespread support for the idea of giving legal protection to the language. However, no such unilateral and community-wide groundswell of support for the language exists in Northern Ireland.

⁵⁵ *Ibid.*

⁵⁶ Stephen May, *Language and Minority Rights* (1st ed., Routledge, 2008).

⁵⁷ Ní Dhrisceoil, note 51, at 72-73.

⁵⁸ Joshua Castellino. "Affirmative Action for the Protection of Linguistic Rights: An Analysis of International Human Rights; Legal Standards in the Context of the Promotion of the Irish Language" (2003) 25 *Dublin University Law Journal* 1.

⁵⁹ *Ibid.*, at 8-9.

⁶⁰ *Ibid.*

III. The Official Languages Act, 2003

Backed by constitutional safeguards, empowered by case law and concerted action by the Irish language community, the Official Languages Act came into being. The Official Languages Act, 2003⁶¹ “marks the first real attempt to translate constitutional ideals into a workable legislative reality.”⁶² The aim of the 2003 Act is:

(1) to endeavour to rectify the imbalance that exists in terms of the provision of State services to Irish speakers, and (2) to underpin the policy of Bilingualism in the State and to support the implementation of that policy by imposing on public sector entities the obligation to provide a quality service to those seeking to transact business with the State through either of the official languages.⁶³

The 2003 Act is the first, formally articulated language policy document outlining the obligations on the State to provide public services in the Irish language. The Act contains explicit measures which impose duties on public bodies to enable people to communicate with the State in either the Irish or English language,⁶⁴ requires public bodies to publish certain core documents in both Irish and English,⁶⁵ and provides for the appointment of a Language Commissioner and the Office of the Language Commissioner to supervise and monitor the implementation of the Act.⁶⁶ The Commissioner has the power to give advice to public bodies and independent citizens regarding their rights under the Act as well as the power to investigate complaints and take legal action against any public body where requested information is not provided, or where there has been a failure to produce a language scheme or update an old scheme. The primary objective of the 2003 Act is to ensure a higher standard of public services being made available in the Irish language. This objective is achieved by placing a statutory obligation on Departments of State and public bodies to make specific provision for the delivery of services in the

⁶¹ Hereinafter the 2003 Act.

⁶² Niamh Nic Shuibhne, “Eighty Years A’ Growing – The Official Languages (Equality) Bill 2002” 2002 20(13) *Irish Law Times* 198, at 198.

⁶³ As stated by Oifig an Aire Ealaíon, Oidhreacht, Gaeltachta agus Oiléan in Summary of Memorandum for Government, Official Languages Equality Bill, 14 July 2000.

⁶⁴ Official Languages Act, 2003, s. 9.

⁶⁵ *Ibid.*, s. 10.

⁶⁶ *Ibid.*, ss. 20- 30.

Irish language in a coherent and agreed fashion through a statutory planning framework, known as a language scheme.⁶⁷ The purpose of the language scheme is to increase, over a period of time, the volume and standard of services made available in Irish from public bodies. The scheme should outline the services which the public body proposes to provide in Irish, English and bilingually. Language schemes of public bodies and Departments of State are agreed on a three-year renewable basis between the head of the public body and approved by the Minister for Arts, Heritage and Gaeltacht.

The 2003 Act is restrictive as it limits an individual's language choice to where the public body has made a decision in their scheme to offer that service in both languages. Therefore, "the real measure of success and effectiveness here hangs critically on the exact nature of the 'schemes' devised by the vast range of public bodies potentially committed to so doing and, more substantively, on their implementation thereafter."⁶⁸ Through annual reports, the Language Commissioner can publish adverse findings regarding the implementation of the 2003 Act.⁶⁹ Finally, the 2003 Act ensures the unrestricted right of persons who communicate with public bodies to receive a reply in the same language⁷⁰, the right to use the Irish language in court proceedings⁷¹ and the right to use the Irish language in the *Oireachtas*.⁷²

A Languages Act cannot be a static entity. It should move and evolve and reflect changing societal and linguistic contexts. In the Irish Programme for Government, there is a pledge to "review the Official Languages Act to ensure expenditure on the language is best targeted towards the development of the language and that obligations are imposed appropriately in response to demand from citizens."⁷³ The appointed committee will review the effectiveness of the Act and consider whether parts of the Act need to be amended, particularly in relation to services through the medium of Irish that are in high demand, and review the role of the Office of *An Coimisinéir Teanga*. The recent call for rationalisation of the office of the language commissioner with the Office of the

⁶⁷ *Ibid.*, s. 11.

⁶⁸ Nic Shuibhne, note 59, at 202.

⁶⁹ Ní Dhrisceoil, note 49, at 73.

⁷⁰ Official Languages Act, 2003, s. 9(2).

⁷¹ *Ibid.*, s.8.

⁷² *Ibid.*, s.6.

⁷³ Government for National Recovery 2011-2016, at 59

<<http://www.irishtimes.com/focus/2011/coalition-pact/agreement.pdf>> (visited 09 May 2012).

Ombudsman, if implemented, will likely result in a reduction in the capacity to monitor the implementation of the 2003 Act and a corresponding reduced ability to hold state bodies to account for failure to comply with the 2003 Act.⁷⁴

In 2011, the Office of *An Coimisinéir Teanga* published a commentary on the workable application and operation of the different sections of the 2003 Act.⁷⁵ This was based on s. 29 of the Act and its aim to share the Office's encounters and knowledge of the language and to add to the review of the Act, as intimated by the Programme for Government 2011-2016. This commentary examined what aspects of the Act worked and what needed to be examined again, including a mandatory Irish provision for the judiciary and legal system.⁷⁶ This report noted that the aims of the Act are laudable, but in this era of austerity it may be increasingly difficult to implement change and, as a result, the Act itself could become powerless.⁷⁷ In relation to the responsibilities of the citizen, the report highlights that if Irish belongs to citizens, then they must use their voice in advocating for and participating with enthusiasm in, not only the execution of the Act and the review of the Act, but also in the potential affirmative language policies. The Act recognises a system of monitoring the fulfilment of state bodies with their duties and it also provides a system for the examination and resolution of complaints.⁷⁸

The report proposes that the amended Act ought to be fit for purpose, serve the needs of Irish language speakers and make certain that meaning is given to the constitutional provision that it is the State's first official language as well as the national language. The report makes the recommendation that public bodies be put into different groups (A, B, C etc...) in accordance with their range of tasks and their level of communication with the public, most notably speakers of the Irish language. The amount of Irish available would be greater depending on the specific category.⁷⁹ Another recommendation is that it ought to be mandatory that citizens are allowed, if they wish, to use their first name,

⁷⁴ Caoilfhionn Nic Pháidín & Seán Ó Cearnaigh eds., *A New View of the Irish Language* (Cois Life, 2008), at 271.

⁷⁵ An Coimisinéir Teanga, *Review of the Official Languages Act 2003- Commentary on the Practical Application and Operation of the Provisions of the Act* (An Coimisinéir Teanga, 2011).

⁷⁶ *Ibid.*; An Coimisinéir Teanga, *Annual Report 2011* (An Coimisinéir Teanga, 2012), at 14.

⁷⁷ *Ibid.*, at 8.

⁷⁸ *Ibid.*

⁷⁹ *Ibid.*, at 11.

surname and address in either official language of the state when dealing with public bodies.⁸⁰

In many ways, the Irish Languages Act works in terms of having cogent terms of reference. However, at the practical level of implementation, it often falls apart. An example of this was illustrated at a public symposium to review the 2003 Act in Trinity College Dublin in 2012. Julian de Spáinn showed how in the simplest terms, the letter of the law is currently being followed in the provision of bilingual signage, but a consistent pattern of errors and inconsistencies in that signage negates the effectiveness of that law.⁸¹

At this symposium, the current language commissioner, Seán Ó Cuirreáin, outlined the duties of the language commissioner and the challenges associated with Language scheme that each state body must implement. He described the constraints and weaknesses of a system that he saw as being too cumbersome, in involving too many public bodies.⁸²

IV. Impediments to Progress

The objectives of the 2003 Act might be considered to be worthy and meritorious. The real criticism of the 2003 Act is the fact that implementation of the provisions of the Act is primarily based on good faith. The ultimate, but somewhat meaningless, penalty is to report the failure or refusal to comply with the scheme to the Houses of the *Oireachtas*. No other mandatory penalties exist.⁸³

According to Ní Dhrisceoil, the main impediment to the implementation of the 2003 Act is the inadequate recruitment of appropriate staff in the civil service.⁸⁴ Without the appointment of key personnel capable of delivering service through Irish, she argues that the Act will be “merely symbolic and not substantive.”⁸⁵ A review of the Act is currently in train, and Williams believes that any such review should focus on the strengths and weaknesses of the Act, in terms of its

⁸⁰ *Ibid.*

⁸¹ Julian de Spáinn, Public Symposium, “*Acht na dTeangacha Oifigiula: Leasú Chun Feabhais*,” School of Law and Irish Language Office, 21 January 2012.

⁸² Seán Ó Cuirreáin, Public Symposium, “*Acht na dTeangacha Oifigiula: Leasú Chun Feabhais*,” School of Law and Irish Language Office, 21 January 2012.

⁸³ Caren Bohane, “The Official languages Act 2003”, (2005) 8 *Cork Online Law Review* 1.

⁸⁴ Ní Dhrisceoil, note 49, at 74.

⁸⁵ *Ibid.*, at 72.

administration, implementation and cost effectiveness.⁸⁶ Ní Dhrisceoil refers to Williams and his belief that any such review should focus on strengths, weaknesses of the Act in terms of its administration, implementation and its cost effectiveness.⁸⁷ Ní Dhrisceoil discusses the implementation of the Act and calls for it to be analysed in terms of what is seen to be working and not working. At one level, visible signage and correspondence are now available in Irish, but points of contact personnel in State bodies are insufficiently available. Ní Dhrisceoil believes that the lack of availability of staff is due to the decision to remove the requirement for Irish in the civil service.⁸⁸ She refers to Francois Grin, who suggests that languages will be sustainable when only three factors are in place: opportunity, capacity and desire.⁸⁹ The lack of opportunity to use Irish in a public state context will surely militate against the opportunity to use the language in a natural context. Language death occurs when the opportunities to use it atrophy. A basic and fundamental gap exists between the rhetoric of the language legislation and the reality of language-impooverished State bodies and she argues “the rights provided in language legislation make little practical sense if they are not fulfilled by the state.”⁹⁰ Ní Dhrisceoil concludes by suggesting that those international language experts and those who promote language rights should “not to get too hung up on regulation.”⁹¹ An undue focus on rights, legislation and regulation will not necessarily aid the promotion of positive language policies.

There are, therefore, reasonably robust legal protections for the Irish language in Ireland. Some of these protections are effective, not least in ensuring the increased visual presence of the language in official signage and correspondence. However, there is little empirical evidence to suggest that these legal protections ultimately have a pivotal role in advancing the Irish language in Ireland. However, without these protections it is possible that the demise of Irish would be even more rapid. The future of Irish in Ireland is ultimately uncertain from a socio-linguistic point of view. Greater certainty may yet apply to the legal framework for Irish as the

⁸⁶ Professor Colin Williams speaking at *Tóstal na Gaeilge 2012- “Tréisiú Stádas na Gaeilge”* hosted by Comhdháil Náisiúnta na hÉireann on January 14 2012, Dublin.

⁸⁷ *Ibid.*

⁸⁸ Ní Dhrisceoil, note 51, at 74.

⁸⁹ Professor Francois Grin, speaking at *Tóstal na Gaeilge 2012- “Tréisiú Stádas na Gaeilge”* hosted by Comhdháil Náisiúnta na hÉireann on January 14 2012, Dublin.

⁹⁰ Ní Dhrisceoil, note 51, at 74.

⁹¹ Professor Colin Williams speaking at *Tóstal na Gaeilge 2012- “Tréisiú Stádas na Gaeilge”* hosted by Comhdháil Náisiúnta na hÉireann on January 14 2012, Dublin.

current review of the Official Languages Act may result in more firm and definitive policies to more effectively monitor the implementation of the 2003 Act.

In this era of economic austerity, there will be cries for reductions in translations. There will be attempts made to streamline and rationalise policies and practices that relate to Irish so as to ensure cost-efficiency. The law itself, including court proceedings and the translation of legislation, may fall victim to these clarion cries and perhaps, it will arguably be useful to analyse the efficiency of some language-promoting systems and practices.

If Northern Ireland were to implement a Languages Act it is likely that the same problems, and others, would prevail. However, without a Languages Act, the language in that contested context may not flourish.

V. Official Languages Act (Canada): A New Vista for Irish in Northern Ireland?

Much can be learnt from the Canadian Official Languages Act 1985,⁹² even though an entire implementation of the model in the North would be impractical.

The Canadian Act gives English and French equal official status. In Canada, a judgment must be made in the official language that the case is argued in, as is evident in Article 20:

- (1) Any final decision, order or judgment, including any reasons given therefore, issued by any federal court shall be made available simultaneously in both official languages where
 - (a) the decision, order or judgment determines a question of law of general public interest or importance; or
 - (b) the proceedings leading to its issuance were conducted in whole or in part in both official languages.

The Irish 2003 Act is not as extensive as the Canadian Act where a principle of “active offer” exists in order to allow Canadian citizens to dictate their language choice. Analysis of the Canadian Act will provide many valid points of reference to those who devise a Languages Act for Northern Ireland.

⁹² Hereinafter the Canadian Act.

The purpose of the Canadian Act is to guarantee respect for both languages in Canada and also to make certain that equal status and equal rights and privileges are given to French and English in relation to their use in federal institutions. The Act aims to support the development of linguistic minority speakers of French and English.⁹³ Under s. 3, the Act affects federal institutions such as public bodies. However, it does not apply to provisional and municipal governments or to private businesses.⁹⁴ Under Part I, s. 4 citizens may use either language in Parliament. It is obligatory for the Parliament to offer simultaneous interpretation of the proceedings and of parliamentary debates. All statutes are enacted and published in both English and French.⁹⁵ In relation to civil proceedings in before all federal courts, except the Canadian Supreme Court, any citizen can be heard by a judge that has knowledge of either of the two languages without the need of an interpreter.⁹⁶ Under Part IV, ss. 21-33, it is evident that not every citizen is obliged to speak both English and French. The Canadian Act aspires to guarantee that the Canadian Government will provide citizens services in the language of their choice, be that French or English. These services must be introduced without delay and must be of identical quality in both official languages.

Not all public offices must provide services in both languages. In order to determine whether the service is needed, a test is taken in relation to the demand for the service. The Government takes into consideration the size of the population who speak the minority language. Furthermore, an office might be forced into providing services in French and English if its mandate relates to the health and safety of the citizens, or if it is regarded as reasonable because of the location. These rules determining which offices must supply services in French and English are explained in the Official Languages (Communications with and Service to the Public) Regulations. Approximately a third of federal institutions are required to provide services in English and French.⁹⁷ As is the case in Ireland, a Commissioner of Official Language exists. It is the duty of the commissioner to guarantee within his/her powers that both official languages are recognised fully and also being compatible with the Act.⁹⁸

⁹³ Official Languages Act 1985, s. 2.

⁹⁴ *Ibid*, s. 3.

⁹⁵ *Ibid*, at Part II ss. 4-13.

⁹⁶ *Ibid*, at Part III ss. 14-20.

⁹⁷ Office of the Commissioner of Official Languages, *Official Languages at the Heart of Our Identity: An Overview of the Official Languages Act* at 5 <http://www.ocolclo.gc.ca/docs/e/ola_llo_e.pdf> (visited 2 February 2013).

⁹⁸ Official Languages Act 1985, Part IX, ss. 49-75.

It is submitted that Northern Ireland would benefit from some of the provisions evident in the Canadian Act, especially those concerning extending the use of languages in the courts, as in ss. 14-20. A Northern Ireland Languages Act should also provide for the use of Irish in the Northern Ireland executive where relevant, as per s. 4 of the Canadian Act. In line with political sensitivities and demographic practicalities, consideration could be given to using the Canadian viability test, as set out in the Official Languages (Communications with and Service to the Public) Regulations. S. 3 could apply in respect of requiring relevant public bodies to use Irish if or when this viability test is implemented.

In demographic terms, a similar situation appears to exist in respect of speakers of Irish in Northern Ireland and speakers of French in Canada or English in Quebec. A minority in Quebec, for example, speak English; over 80% are French speakers and only 10.7% speak English at home.⁹⁹ However, the two contexts are radically different. French and English are power brokers in the linguistic world, with enormous reservoirs of lexicon, speakers and contexts of use. These languages are not as demographically challenged or as marginalised as the Irish language. The rigid application in Northern Ireland of a Languages Act that provides for a major world language such as French would not be feasible or even laudable. It would be realistically impossible in this era of financial constraints to mirror a Northern Irish Act with the Canadian Act.

The Canadian Act is better from a purely linguistic point of view, but the Languages Act in Ireland is a more feasible model to follow. Therefore, the current legal status of the Irish language in Northern Ireland is in a state of limbo, neither an official language nor a defunct one, neither fully supported nor wholly rejected by diverse political, educational and social contexts. Its protection under the Charter does not fully recognise the fact that Irish has a place of national sovereignty within the consciousness of a substantial part of the population of Northern Ireland. The provisions of the Charter are never fully going to address the role of Irish as part of tribal remembering, in the sense that Irish is the ancestral tongue but not the mother tongue of a large proportion of the population.¹⁰⁰ A better direction for Irish in Northern Ireland would be the

⁹⁹ Mike De Souza, *Census Canada 2011: French remains dominant in Quebec, despite immigration* (National Post) <<http://news.nationalpost.com/2012/10/24/census-canada-2011-french-remains-dominant-in-quebec-despite-immigration/>> (visited 02 February 2013).

¹⁰⁰ Máiread Nic Craith, *Europe and the Politics of Language Citizens, Migrants and Outsiders* (1st ed., Palgrave Macmillan, 2006).

enactment of the Languages Act, as promised under the St Andrews Agreement. The lack of action on this issue is linked to political perceptions ascribed to the language. That Act should draw upon the provisions of the Official Languages Acts in Ireland and Canada and extend beyond them to recognise the particular linguistic, legal and societal challenges that pertain to languages in Northern Ireland.

If Northern Ireland were to adopt a Languages Act, it would need to consider including some elements of the Irish 2003 Act, such as the employment of a language commissioner and language schemes. In addition, any Languages Act in Northern Ireland will need to allocate specific language responsibilities to particular groups. There will be a need to ensure that penalties for failure to comply with the Languages Act in Northern Ireland are enforced. There would be a need to ensure that sufficient staff with sufficient command of the language are employed in state bodies. A duty to ensure that opportunities exist to use the language is also required. POBAL's call for the Irish language to be given official language status in Northern Ireland is not practical, realistic or achievable at this juncture as a consequence of the politicisation of language. The Languages Act in Northern Ireland needs also to be mindful of proposed changes to the Act in Ireland.

The public symposium on the 2003 Act sought to give new direction to the Act, to pinpoint its limitations and to address its possibilities.¹⁰¹ Dáithí Mac Cárthaigh called for amendments to the 2003 Act. He alluded to the need for greater competency of the judges in a case that is held through Irish or bilingually.¹⁰² He argued that the judge should be able to understand Irish and listen to the case through the medium of Irish without help from a translator, as it applies under s. 16 of the Canadian Act where this provision is in place. This type of provision would not, however, be workable in Northern Ireland, given the current context and the realistic fact that only a tiny proportion of judges would have any knowledge of the language in Northern Ireland.

These two models offer good exemplars for Northern Ireland in terms of the composition of a Languages Act. They cannot simply be directly copied and applied to the Northern Irish context because these Acts reflect different contexts. Ireland's Languages Act is probably a more realistic model for Northern Ireland in so far as it reflects the reality that

¹⁰¹ Public Symposium, "*Acht na dTeangacha Oifigiula: Leasú Chun Feabhais*," School of Law and Irish Language Office, 21 January 2012.

¹⁰² Dáithí MacCárthaigh, Public Symposium, "*Acht na dTeangacha Oifigiula: Leasú Chun Feabhais*," School of Law and Irish Language Office, 21 January 2012.

Irish, while rich in heritage, unlike French and English, is spoken by very few and practical constraints apply. Other models of Languages Acts should also be examined, to include the Acts that apply in Wales and Scotland, whose languages share a common linguistic heritage.

A Northern Ireland Languages Act, if implemented, needs to include some sanctions-based approach for non-compliance. Approaches to the Languages Act should be rights-based rather than culture-based. A rights-based approach to agitation for legislation to protect the language in Northern Ireland will be more productive and less divisive than one which is perceived as being too strongly affiliated to one political perspective.

The implementation of such an Act might involve unified and sustained action to both protect and promote the language, because the need to do both, protect and promote, is central to any expansion of the language. Positive promotion of the language cannot happen solely in a legislative context, a context that is always going to be perceived to be dull and tedious to people. Legislation can only support language user-based reform. It cannot, in itself, impel or impose this reform.

